

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALEJANDRO C. MARTINEZ,

Plaintiff,

v.

Civ. No. 07-1126 RB/CG

U.S. BORDER PATROL, et al.,

Defendants.

**ORDER ADOPTING
MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDATION
AND DISMISSING THE CASE WITH PREJUDICE**

THIS MATTER is before the Court on the *Magistrate Judge's Proposed Findings and Recommendation to Dismiss the Case with Prejudice ("PF&R")* (Doc. 107). The Court has considered the *PF&R*, the objections filed by Plaintiff Martinez on July 23, 2010 (Doc. 108), the record in the case, and the relevant law. Defendant Parks did not object to the *PF&R*, and the time for doing so has passed. The Court has conducted a de novo determination of those portions of the *PF&R* to which Mr. Martinez objected, in accordance with 28 U.S.C. § 636(b). The Court will ADOPT the *PF&R* and DISMISS the action with prejudice because Mr. Martinez has repeatedly failed to comply with discovery and with orders of the Court.

In the *PF&R*, the magistrate judge found that dismissal was warranted under *Erenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992) because: (1) Defendant Parks has been and will continue to be prejudiced by Mr. Martinez' failures, (2) Mr. Martinez' failures to comply have interfered with the judicial process, (3) Mr. Martinez' failures are due to him and him alone, (4) Mr. Martinez was warned repeatedly by the undersigned and

by the magistrate judge that his failures could and would result in dismissal, and (5) lesser sanctions have not been and are not expected to be effective. *PF&R* (Doc. 107) at 11–14.

Mr. Martinez objected to the *PF&R*, insisting that he has “complied with orders and requests as best as [he could] with all information [he] had at time of requests and orders,” that “[he]’ll give you, provide[] what [he has],” and that he has “not deliberately withheld information or documents.” *Objections* (Doc. 108) at 1, 2. He adds that “as for delaying or interfering with judicial process, I have pleaded with the courts for trial since I filed [the] case.” *Id.* He says that he has lost witnesses and evidence and implies that such losses result from the fact that no trial has been held yet. *Id.*

Mr. Martinez does not appear to dispute the facts found in the *PF&R*, rather he appears to dispute that these facts constitute failures to comply with discovery and with Court orders. The Court does not agree because the facts establish that Mr. Martinez has, in fact, repeatedly failed to comply. For example, Mr. Martinez failed to appear for his first scheduled deposition. *Untitled Document* (Doc. 74). Second, he failed to respond to certain interrogatories in writing. *See Order Granting Defendant’s [Second Motion for Sanctions]* (Doc. 103). Third, he failed to produce certain tax records and complete contact information for witnesses by 5:00 p.m. on May 11, 2010. *See Order* (Doc. 99). Fourth, he still failed to produce the tax records, the complete contact information for certain witnesses, and the “27 pounds” of paperwork by the extended deadline of June 1, 2010. *See PF&R* (Doc. 107) at 7–11. Fifth, he withheld documentation related to Mr. Lucero, with whom Mr. Martinez was apparently drinking just prior to the incident that underlies this action, until months after Mr. Lucero’s deposition, thereby preventing Defendant from

questioning Mr. Lucero about the documents. *Id.* Mr. Martinez' objection that these facts do not constitute a failure to comply is meritless.

Mr. Martinez' second objection seems to be that a trial should have been held by now and that the delay in holding a trial is the actual interference with the judicial process rather than his own failures to comply. This objection is also meritless because trials cannot be held until *after* discovery is complete. *See Federal Rules of Civil Procedure.*

IT IS THEREFORE ORDERED that the *Magistrate Judge's Proposed Findings and Recommendation to Dismiss the Case with Prejudice* (Doc. 107) be **ADOPTED**.

IT IS FURTHER ORDERED that for the reasons outlined in the *PF&R* this case be **DISMISSED with prejudice** under Federal Rule of Civil Procedure 37 for repeated failures to comply with discovery and with orders of the Court.

IT IS SO ORDERED.



THE HONORABLE ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE